

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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MASSACHUSETTS MUSEUM OF
CONTEMPORARY ART FOUNDATION, :
INC., :
: Plaintiff, Civil Action
: No. 3:07-cv-30089-MAP
v. :
: Defendant. :
----- x

**TRANSMITTAL AFFIDAVIT OF KURT WM. HEMR, ESQ.
IN SUPPORT OF PLAINTIFF MASS MoCA'S MOTION FOR SUMMARY JUDGMENT**

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Dated: August 31, 2007
Boston, Massachusetts

Counsel for Plaintiff
Massachusetts Museum of Contemporary
Art Foundation, Inc.

COMMONWEALTH OF MASSACHUSETTS)
) ss.:
 SUFFOLK COUNTY)

I, KURT WM. HEMR, depose and say:

1. I am a member of the bar of the Commonwealth of Massachusetts and a member of the law firm of Skadden, Arps, Slate, Meagher & Flom LLP, counsel for plaintiff Massachusetts Museum of Contemporary Art Foundation, Inc. ("MASS MoCA") in the above-captioned action.

2. I make this transmittal affidavit in support of MASS MoCA's Motion For Summary Judgment in the above-captioned action and for the purpose of transmitting to the Court true and correct copies of the following documents attached as exhibits hereto:

<u>Document</u>	<u>Exhibit</u>
Transcript of Deposition of Joseph C. Thompson (dated August 7, 2007)	1
Transcript of Deposition of Joseph C. Thompson (dated August 23, 2007) ¹	2
Transcript of Deposition of Christoph Büchel (dated August 9, 2007)	3
E-mail from J. Thompson to M. Peyot re: "Büchel proposal from MASS MoCA" (dated Dec. 21, 2005; MASS MoCA 04170-73) ²	4
E-mail from C. Büchel to M. Maccarone re: "new installation tribunal room" (dated Feb. 14, 2006; BUCC00003937)	5
E-mail from N. Thompson to C. Büchel re: "Büchel building 5" (dated Mar. 8, 2006; BUC00002443- 2444)	6
E-mail exchange between N. Thompson and C. Büchel re: "Büchel building 5" (dated Mar. 15, 2006; BUC00002449-2451)	7

¹ Confidential information has been redacted from pp. 332-33 of this public filing.

² E-mail addresses and telephone numbers have been redacted from Exhibits to this public filing.

<u>Document</u>	<u>Exhibit</u>
E-mail from J. Thompson to R. Criddle and N. Thompson re: "Buchel residency" (dated Mar. 21, 2006; MASS MoCA 03799-3802)	8
E-mail from N. Thompson to M. Maccarone re: "Need a drawing" (dated Apr. 3, 2006; BUC00000784)	9
E-mail from N. Thompson to C. Büchel and M. Maccarone (dated May 3, 2006; BUC00000776)	10
E-mail from N. Thompson to D. Birch re: "number of sea containers" (dated June 27, 2006; BUC00002540)	11
E-mail from C. Büchel to N. Thompson re: "number of sea containers" (dated July 4, 2006; BUC00002325)	12
E-mail from B. Hanson to J. Thompson re: "Buchel time" (dated Aug. 18, 2006; MASS MoCA 03829-3830)	13
Photographs of August 2006 Modeling Session (MASS MoCA 10814)	14
E-mail from M. Maccarone to N. Thompson re: "contract" (dated Sept. 14, 2006; MASS MoCA 16183)	15
E-mail from N. Thompson to M. Maccarone re: "Buchel Contract.doc" (dated Sept. 14, 2006; MASS MoCA 08313-08316)	16
Letter from J. Thompson to C. Büchel (dated Sept. 15, 2006; MASS MoCA 13594-13599)	17
E-mail from N. Thompson to M. Maccarone, C. Büchel and J. Thompson re: "Big thoughts, key information" (dated Sept. 18, 2006; BUC00000737)	18
E-mail from N. Thompson to C. Büchel and J. Thompson re: "Big thoughts, key information" (dated Sept. 19, 2006; BUC00002559-2560)	19
E-mail from N. Thompson to J. Thompson and C. Büchel re: "Big thoughts, key information" (dated Sept. 25, 2006; BUC00000727-731)	20
E-mail from N. Thompson to C. Büchel re: "Big thoughts, key information" (dated Sept 26, 2006; BUC00002624-2629)	21
E-mail from C. Büchel to N. Thompson re: "flight, tank, statue" (dated Oct. 4, 2006; BUC00002298-2299)	22
E-mail from J. Thompson to N. Thompson, R. Criddle, D. Birch and B. Hanson re: "flight, tank, statue" (dated Oct. 6, 2006; MASS MoCA 03189-3191)	23

<u>Document</u>	<u>Exhibit</u>
E-mail from C. Büchel to N. Thompson re: "press etc." (dated Oct. 27, 2006; BUC00002278-2279)	24
E-mail from J. Thompson to C. Büchel re: "Christoph...a few friendly words" (dated Oct. 28, 2006; BUC00002254)	25
Letter from J. Thompson to M. Maccarone re: Büchel assistants agreement (dated Oct. 31, 2006; BUC00000482)	26
E-mail from M. Maccarone to C. Büchel (dated Dec. 3, 2006; BUC00000034)	27
E-mail from J. Thompson to C. Büchel re: "REMINDER" (dated Dec. 5, 2006; BUC00002250-2251)	28
E-mail from C. Büchel to J. Thompson and N. Thompson re: "REMINDER" (dated Dec. 5, 2006; BUC00001991-1993)	29
E-mail from J. Thompson to C. Büchel re: "REMINDER" (dated Dec. 6, 2006 ; BUC00002247-2248)	30
E-mail from J. Thompson to C. Büchel and N. Thompson re: "statement" (dated Dec. 6, 2006; BUC0000669-670)	31
E-mail from C. Büchel to N. Thompson re: "statement" (dated Dec. 6, 2006; BUC00002399)	32
Announcement on MASS MoCA's website re: postponed opening date (dated Dec. 6, 2006; BUC00000483)	33
E-mail from J. Thompson to C. Büchel re: "distribution of statement" (dated Dec. 7, 2006; BUC00002218-2220)	34
E-mail from N. Thompson to M. Maccarone re: "conf call" (dated Dec. 12, 2006; BUC00000665)	35
E-mail from J. Thompson to C. Büchel re: "production meeting" (dated Dec. 14, 2006; BUC00002209-2211)	36
E-mail from B. Hanson to C. Büchel re: "E-ticket – Itinerary Receipt – Please Print Out" (dated Dec. 14, 2006; BUC00001483-1485)	37
E-mail from J. Thompson to K. Haklisch re: "thank you" (dated Dec. 17, 2006; MASS MoCA 07908)	38
E-mail from J. Thompson to I. Wirth re: "Büchel in Amerika" dated (Dec. 26, 2006; MASS MoCA 13430)	39

<u>Document</u>	<u>Exhibit</u>
E-mail from J. Thompson to N. Thompson re: "buchel" dated (Jan. 8, 2007; MASS MoCA 07882)	40
Letter from J. Thompson to I. Wirth re: Büchel installation (dated Jan. 8, 2007; BUC00000126-129)	41
E-mail from J. Thompson to C. Providoli and M. Maccarone re: "[SPAM] Christoph's return" (dated Jan. 12, 2007; BUC00001001)	42
E-mail from C. Büchel to M. Maccarone re: "A Training Ground for Democracy" (dated Jan. 16, 2007; BUC00004048-4049)	43
E-mail from C. Büchel to M. Maccarone re: "no 2 fwd: Training for Democracy" (dated Jan. 16, 2007; BUC00004045-4047)	44
E-mail from M. Maccarone to J. Thompson attaching a letter from C. Büchel (dated Jan. 20, 2007; BUC00000165-169)	45
E-mail from D. Birch to C. Büchel re: "MASS MoCA" (dated Jan. 20 2007; BUC00000059)	46
E-mail from C. Providoli to M. Payot re: "Fwd: buchel" (dated Jan. 23, 2007; BUC00000170-71)	47
E-mail from J. Thompson to M. Maccarone and M. Payot re: "[SPAM] Response to Christoph" (dated Jan. 24, 2007; BUC00000995-999) ³	48
E-mail from M. Maccarone to J. Thompson re: Joe's response to Christoph (dated Jan. 24, 2007; BUC00002649)	49
E-mail from J. Thompson to C. Büchel re: "[SPAM] your response" (dated Jan. 29, 2007; BUC00000900-901)	50
E-mail from J. Thompson re: "MASS MoCA Büchel" (dated Jan. 31, 2007; MASS MoCA 13299-13300) ⁴	51
E-mail from N. Thompson to M. Maccarone re: averting "the situation of Christoph not coming back" (dated Feb. 1, 2007; BUC00000637)	52

³ Certain of the pages contained in Exhibit 48 were produced to MASS MoCA in the course of this litigation without Bates numbers.

⁴ This Confidential document has been redacted for purposes of this public filing.

<u>Document</u>	<u>Exhibit</u>
E-mail from J. Thompson to C. Büchel re: "[SPAM] Feb 1 letter regarding show completion" (dated Feb. 2, 2007; BUC00000568-571)	53
E-mail from J. Thompson to C. Büchel re: "[SPAM] object list" (dated Feb. 2, 2007; BUC00000884-899) ⁵	54
E-mail from C. Büchel to J. Thompson re: "Feb 1 letter regarding show completion" (dated Feb. 2, 2007; BUC00001896)	55
E-mail from C. Büchel to J. Thompson re: "Training Ground" (dated Feb. 5, 2007; BUC00001894-1895)	56
E-mail from J. Thompson to C. Büchel re: "[SPAM] You asked that I respond point by point..." (dated Feb. 6, 2007; BUC00000561-566)	57
E-mail from C. Büchel to J. Thompson re: "You asked that I respond point by point..." (dated Feb. 6, 2007; BUC00001885-1893)	58
E-mail from J. Thompson to D. Birch re: "Some lines as to how far to go in putting objects in Buchel..." (dated Feb. 14, 2007; MASS MoCA 03474-3477)	59
E-mail from R. Criddle to D. Birch, J. Thompson and N. Thompson re: "Some lines as to how far to go in putting objects in Buchel..." (dated Feb. 15, 2007; MASS MoCA 17626-17628)	60
E-mail from J. Thompson to C. Büchel re: "Training Ground" (dated March 22, 2007; BUC00000544)	61
E-mail from M. Maccarone to G. Edgers, C. Hempel, C. Büchel and C. Providoli re: "MASS COMA" (dated March 26, 2007; BUCC00004153-4160)	62
G. Edgers, <u>Behind doors, a world unseen</u> , Boston Globe, March 28, 2007	63
Letter from J. Thompson delivered via e-mail and express mail to C. Büchel re: "Training Ground for Democracy" (dated March 28, 2007; BUC00000075-79)	64
E-mail from C. Büchel to M. Maccarone re: "coma joe letter" (dated March 28, 2007; BUC00003454)	65
E-mail from M. Maccarone to C. Büchel re: "mass coma" (dated March 29, 2007; BUC00004186-4187)	66

⁵ Certain of the pages contained in Exhibit 54 were produced to MASS MoCA in the course of this litigation without bates numbers.

<u>Document</u>	<u>Exhibit</u>
E-mail from C. Büchel to J. Thompson re: "Your Fedex with a deadline from the 31 st of March arrived the 2 nd of April in Basel" (dated April 9, 2007; BUC00001882-1884)	67
E-mail from C. Büchel to J. Thompson re: "For any future communication get in touch with my galleries" (dated April 9, 2007; BUC00001881)	68
E-mail R. Criddle to J. Thompson re: "Buchel.....'the last stand'" (dated April 11, 2007; MASS MoCA 05985)	69
E-mail from J. Thompson to C. Büchel re: "Training Ground" (dated April 13, 2007; BUC00000531)	70
E-mail from M. Maccarone to C. Providoli re: "assistants" (dated April 25, 2007; BUC00003490-3491)	71
E-mail from M. Maccarone to J. Thompson re: "[SPAM] This repeats txtmsg..." (dated April 30, 2007; BUC00000525)	72
E-mail from M. Maccarone to J. Thompson (dated May 1, 2007; BUC00000523)	73
E-mail from D. Zaretsky to J. Thompson re: "Christoph Büchel" (dated May 2, 2007; MASS MoCA 07688-7690)	74
E-mail from K. Myers to various MASS MoCA personnel re: "Does anyone know who MARTIN BROMIRSKI is" (dated May 17, 2007; MASS MoCA 05189)	75
Press release from MASS MoCA (dated May 22, 2007; MASS MoCA 06794-6796)	76
G. Edgers, <u>Exclusive: Büchel's Statement</u> (postings on "Exhibitionist" web log at Boston.com, dated May 23, 25, and June 1, 7, 2007)	77
E-mail from J. Thompson re: "Made at MASS MoCA opening..." (dated May 24, 2007; MASS MoCA 07441)	78
R. Kennedy, <u>The Show Will Go On, but the Art Will Be Shielded</u> , N.Y. Times, May 22, 2007	79
W. Hanley, <u>Site-Specific Impasse</u> , ArtInfo.com, July 20, 2007	80
Detail spreadsheet re: MASS MoCA expenditures on "Training Ground For Democracy"	81

Document

Exhibit

Declaration Of Joseph C. Thompson (dated Aug. 30, 2007)

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I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 31, 2007
Boston, Massachusetts

/s/ Kurt Wm. Hemr

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CERTIFICATE OF SERVICE

I, Kurt Wm. Hemr, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing ("NEF"), and paper copies will be sent to those indicated as non-registered participants on August 31, 2007.

Dated: August 31, 2007

/s/ Kurt Wm. Hemr

Kurt Wm. Hemr